

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
Department of Business Oversight
320 West 4th Street, Ste. 750
Los Angeles, California 90013-2344
Telephone: (213) 576-7604
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA LICENSE NO.: 413-0449
)	
THE COMMISSIONER OF BUSINESS)	STATEMENT OF FACTS IN SUPPORT OF
OVERSIGHT,)	ORDER TO DISCONTINUE VIOLATIONS
)	PURSUANT TO FINANCIAL CODE
Complainant,)	SECTION 50321 AND NOTICE OF INTENT
)	TO MAKE ORDER FINAL
v.)	
)	
SWBC MORTGAGE CORPORATION,)	
)	
Respondent.)	
)	
)	

The Complainant is informed and believes and based upon such information and belief,
alleges and charges as follows:

I

Introduction

1. SWBC Mortgage Corporation (SWBC) is a residential mortgage lender and loan servicer licensed by the Commissioner of Business Oversight (Commissioner) pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code Section §50000 et seq.). SWBC has its principal place of business located at 9311 San Pedro, Suite 100, San Antonio, Texas 78216.

1 SWBC has five branch locations under its CRMLA license in California and elsewhere. SWBC
2 employs mortgage loan originators in its CRMLA business.

3 II

4 CRMLA Violations

5 2. On or about December 14, 2015, the Commissioner commenced a regulatory
6 examination of the books and records of SWBC under the CRMLA (2015 regulatory examination).
7 The 2015 regulatory examination disclosed that in 3 of the 16 funded loans reviewed that contained
8 evidence of disbursement date, or approximately 18.75%, SWBC was charging the borrower per
9 diem interest in excess of one day prior to the disbursement of loan proceeds in violation of
10 California Financial Code section 50204, subdivision (o). A California Additional Per Diem Interest
11 Charge Disclosure was found in the 3 loans with per diem interest overcharges. The disclosures
12 were not prepared in accordance with California Civil Code section 2948.5, subdivision (b) or were
13 not applicable, and therefore were not considered in calculating per diem interest charges. The per
14 diem interest overcharges averaged \$109.76 per loan. The range of per diem interest overcharges
15 was between \$78.56 and \$135.56. The range of days that interest was overcharged was between 1
16 and 3 days.

17 3. On or about March 7, 2017, the Commissioner, based upon the findings of the 2015
18 regulatory examination, directed SWBC to conduct a self-audit regarding per diem interest charges
19 for all loans originated from September 20, 2012 through March 7, 2017, make appropriate refunds,
20 and submit a report as to the findings of the self-audit (self-audit report). On or about May 25, 2017,
21 SWBC submitted its self-audit report to the Commissioner. The self-audit report filed with the
22 Commissioner, which covered the period from September 20, 2012 through May 4, 2017, disclosed
23 213 per diem interest overcharges out of the 607 loans, or 35%.

24 4. The Commissioner had found that SWBC was overcharging per diem interest during
25 the last regulatory examination under the CRMLA that commenced in October 2011. Based upon
26 the findings of the 2011 regulatory examination, the Commissioner instructed SWBC to implement
27 such procedures as necessary to ensure that per diem interest was not overcharged in the future.
28

1 5. By reason of the foregoing, SWBC has violated Financial Code sections 50204,
2 subdivision (o) and 50314.

3 6. Financial Code section 50321 provides in pertinent part:

4 If, after investigation, the commissioner has reasonable grounds
5 to believe that any licensee has violated its articles of incorporation or
6 any law or rule binding upon it, the commissioner shall, by written order
7 addressed to the licensee, direct the discontinuance of the violation. The
8 order shall be effective immediately, but shall not become final except
9 in accordance with the provisions of Section 50323.

10 7. Financial Code section 50323 provides:

11 (a) No order issued pursuant to Section 50321 or 50322 may become
12 final except after notice to the affected licensee of the commissioner's
13 intention to make the order final and of the reasons for the finding. The
14 commissioner shall also notify the licensee that upon receiving a
15 request the matter will be set for hearing to commence within 15 business
16 days after receipt. The licensee may consent to have the hearing
17 commenced at a later date. If no hearing is requested within 30 days
18 after the mailing or service of the required notice, and none is ordered
19 by the commissioner, the order may become final without hearing and
20 the licensee shall immediately discontinue the practices named in the
21 order. If a hearing is requested or ordered, it shall be held in accordance
22 with the provisions of the administrative Procedure Act (Chapter 5
23 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
24 the Government Code), and the commissioner shall have all the powers
25 granted under that act. If, upon the hearing, it appears to the commissioner
26 that the licensee is conducting business in an unsafe and injurious manner
27 or is violating its articles of incorporation or any law of this state, or any
28 rule binding upon it, the commissioner shall make the order of discontinuance
final and the licensee shall immediately discontinue the practices named
in the order.

(b) The licensee has 10 days after an order is made final to commence an
action to restrain enforcement of the order. If enforcement of the order is not
enjoined within 10 days by the court in which the action is brought,
the licensee shall comply with the order.

 WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue
Violations Pursuant to Financial Code Section 50321 and notifying SWBC of her intention to make
the order final.

1 Dated: October 2, 2017
2 Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

3
4 By _____
5 Judy L. Hartley
6 Senior Corporations Counsel
7 Enforcement Division
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28